

## **3 FAH-1 H-8300 NEPOTISM**

### **3 FAH-1 H 8310 GENERAL PROVISIONS**

*(TL:POH-074; 10-18-2001)*

### **3 FAH-1 H-8311 EMPLOYEE RESPONSIBILITIES**

*(TL:POH-074; 10-18-2001)*

*(State Only)*

*(Applies to staff assigned/employed abroad)*

An employee whose household members are employed must scrupulously insulate himself or herself from acts benefiting, affecting, or giving the appearance of benefiting or affecting his or her house members. The employee must insulate himself or herself from actions reasonably anticipated to benefit the household members' careers or responsibilities.

### **3 FAH-1 H-8312 DEFINITIONS**

*(TL:POH-074; 10-18-2001)*

*(State Only)*

*(Applies to staff assigned/employed abroad)*

- a. For the purpose of 3 FAM 8310 and this subchapter only:

(1) A "family member" is a husband, wife father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister. The definition of family member is irrespective of employing agency, nationality, whether a person is on an employee's travel orders, or whether the person is a resident at the employee's post of assignment;

(2) A "household member" is an individual who resides with the employee in U.S. Government provided or subsidized quarters other than legitimate domestic staff, and/or any individual defined as a family member in paragraph above; and

(3) An “employee” is any individual employed by the Department of State. The term “employee” includes all categories of persons with whom the Department of State has a direct employer-employee relationship (including locally employed staff whether direct-hire, personal services agreement (PSA), or personal services contract (PSC)). The term “employee” specifically excludes commissary, recreation association or institutional contractor’s employees; contractors; grantees; individuals whose services are provided by diplomatic service bureaus; purchase order vendors, and all others without a direct employee-employer relationship with the U.S. Government.

b. Take Notice (N.B.): While the award of a purchase order or a contract (other than PSCs and PSAs), grant or cooperative agreement to household members technically is not subject to anti-nepotism rules, it is subject to conflict of interest prohibitions contained in 18 U.S.C. and 5 CFR 2635, Subpart E. Questions regarding implications of a family member receiving purchase orders, contracts, grants, or cooperative agreements should be addressed to the Office of the Procurement Executive (A/OPE) and the Office of the Assistant Legal Adviser for Employment Law (L/EMP).

### **3 FAH-1 H-8313 PROHIBITED CONDITIONS**

*(TL:POH-074; 10-18-2001)*

*(State Only)*

*(Applies to staff assigned/employed abroad)*

A household member may not be employed if such employment would violate any of the following provisions:

(1) An employee may not sign or approve any official actions directly affecting a household member, including but not limited to appointment affidavits and personnel actions. An employee may not grant security clearances, certify time and attendance records, approve travel, or certify payments; act as rating or reviewing officer on evaluations reports; act as rating or reviewing officer for a household member’s rating or reviewing officer; initiate or endorse awards or disciplinary actions; prepare or approve job descriptions; establish work requirements; act as a certifying or contracting officer on documents which are signed by a household member as a certifying or contracting officer; approve official documents (such as passports or visas) prepared by a household member; have a working relationship which has or gives the appearance of having direction or control over the duties, assignment, promotion, or career of a household member;

(2) An employee and a household member of that employee may not be placed into positions wherein they jointly control Government resources, property, or money, establish Government policy; or where an employee or household member may reasonably be expected to audit, inspect, review, evaluate, promote, advance, or approve work assigned to a member of his or her own household;

(3) An employee and a member of the employee's household may not be placed into positions that would require reconfiguration of lines of supervision and work processes in such a manner as would be reasonably expected to have an adverse effect on the mission of the Government or other employees; and

(4) Neither an employee nor anyone whom he or she rates or reviews may participate in an employment selection process when a household member of that employee is likely to be a candidate for a position under consideration. The employment selection process includes participation as selecting official or member of an employment committee, defining position requirements, establishment of qualification standards for the position, preparation or approval of position vacancy announcements, classification of the position, setting, establishing, or recommending pay levels. An employee's participation in an employment selection process disqualifies that employee's household members from consideration for that position.

### **3 FAH-1 H-8314 ANTI-NEPOTISM REVIEW**

*(TL:POH-074; 10-18-2001)*

*(State Only)*

*(Applies to staff assigned/employed abroad)*

a. Posts must request and receive the approval of the Director of the Office of Overseas Employment (HR/OE) before employing a household member abroad if any of the following conditions applies:

(1) The employee or prospective employee is a household member of an ambassador, chief of mission, deputy chief of mission, principal officer, or deputy principal officer;

(2) Any elements of the "Prohibited Conditions," listed in 3 FAH-1 H-8313 might appear to exist;

(3) One household member would be subordinate to (either directly or indirectly) the other, or receive work assignments, jointly control government resources, or make substantive decisions with their household member;

(4) One household member would be anticipated to have a continuing and substantive working relationship with the other or be required to assign, review or approve the work of the other; and

(5) Substantial rearrangement or realignment of duties or responsibilities at post would be required in order to comply with the requirements of this regulation.

b. The Director of HR/OE is authorized to act on behalf of the Director General of the Foreign Service and Director of Human Resources to approve or disapprove employment of household members abroad in consultation with the Assistant Legal Adviser for Employment Law (L/EMP), as appropriate, consistent with these regulations. The employing bureau shall submit requests to approve employment of household members by decision memorandum to HR/OE.

c. Determinations of HR/OE or the Director General of the Foreign Service and Director of Human Resources remain in effect only so long as the approved employment conditions and the individuals in the chain of command remain unchanged.

d. Requests for approval to hire a household member must include the following information:

- (1) Name and relationship of the applicant to the employee;
- (2) Position and grade occupied by the employee;
- (3) Description and grade level of the household member's proposed position;
- (4) Name and grade of previous incumbent of the position;
- (5) Description of the process by which the position vacancy was advertised;
- (6) Application process (other applicants, sole applicant, committee selection);
- (7) Description of the qualifications of the household member and other applicants;
- (8) Summary of applicants' veterans preference status and family member preference status;
- (9) Proposed work schedule (part-time, full-time, job-share, etc.);
- (10) Proposed employment method (direct-hire, PSA, PSC, PIT, FMA, etc.);

(11) Physical locations and distance between work locations of the employee and the household member;

(12) Identification, by position and name, of the employees to be designated rating and reviewing officials for purposes of performance evaluation for this position, and whether or not either of these designated officials is rated or reviewed by a household member of the applicant;

(13) Proposed alternative supervisory arrangements during periods when those in the chain of command may be absent from post;

(14) Description of the involvement of the employee and those whom the employee supervises in the selection process, including the creation of the position and establishment of the desired qualification; and

(15) Accommodations proposed to avoid any elements of the "Prohibited Conditions" listed in 3 FAH 1 H-8311.

e. Appeals of HR/OE determinations may be addressed to the Director General of the Foreign Service and Human Resources. The Director General may sustain or amend any determination. Appeals should be transmitted by the appropriate bureau to M/DGHR.

### **3 FAH-1 H-8315 STUDENT EMPLOYMENT PROGRAMS**

*(TL:POH-074; 10-18-2001)*

*(State Only)*

*(Applies to staff assigned/employed abroad)*

a. Notwithstanding the provisions of 3 FAH-1 H-8314, temporary employment of a household member who is a bona fide full-time student in a summer or vacation hire position may be approved by post without the Director of HR/OE's approval, provided that:

(1) The vacation or summer hire program is part of an established program administered jointly by the post's Human Resources and the Community Liaison Offices;

(2) All hires are employed on a set wage schedule; and

(3) All applicants for such positions are effectively employed.

However, an employee may not advocate or take part in the selection, assignment, supervision rating, review, or discipline of a member of his or her own household, nor may he or she directly supervise or control the work assignments of a member of his or her own household.

b. Such appointments that occur without HR/OE approval consistent with paragraph a above shall be limited to 120 days per calendar year.

c. Employment under 3 FAH-1 H-8315 shall be by Personal Services Agreement or Personal Services Contract, as appropriate.

d. Should a post be unable to determine whether it can meet the conditions established in paragraph a above, it shall consult with the Bureau of Human Resources, Office of Overseas Employment (HR/OE) prior to initiating any employment actions.

### **3 FAH-1 H-8316 THROUGH H-8319 UNASSIGNED**